

1 AN ACT concerning tobacco.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Tobacco Product Manufacturers' Escrow Act
5 is amended by changing Section 15 and by adding Section 20 as
6 follows:

7 (30 ILCS 168/15)

8 Sec. 15. Requirements.

9 (a) Any tobacco product manufacturer selling cigarettes
10 to consumers within the State of Illinois (whether directly
11 or through a distributor, retailer, or similar intermediary
12 or intermediaries) after the effective date of this Act shall
13 do one of the following:

14 (1) become a participating manufacturer (as that
15 term is defined in Section II(jj) of the Master
16 Settlement Agreement) and generally perform its
17 financial obligations under the Master Settlement
18 Agreement; or

19 (2) (A) place into a qualified escrow fund by April
20 15 of the year following the year in question the
21 following amounts (as such amounts are adjusted for
22 inflation):

23 (i) For 1999: \$0.0094241 per unit sold
24 after the effective date of this Act;

25 (ii) For 2000: \$0.0104712 per unit sold;

26 (iii) For each of 2001 and 2002:
27 \$0.0136125 per unit sold;

28 (iv) For each of 2003 through 2006:
29 \$0.0167539 per unit sold;

30 (v) For each of 2007 and each year
31 thereafter: \$0.0188482 per unit sold.

1 (B) A tobacco product manufacturer that places
 2 funds into escrow pursuant to subdivision (a)(2)(A)
 3 shall receive the interest or other appreciation on
 4 the funds as earned. The funds themselves shall be
 5 released from escrow only under the following
 6 circumstances:

7 (i) to pay a judgment or settlement on
 8 any released claim brought against the tobacco
 9 product manufacturer by the State or any
 10 releasing party located or residing in the
 11 State. Funds shall be released from escrow
 12 under this subdivision (a)(2)(B)(i): (I) in
 13 the order in which they were placed into
 14 escrow; and (II) only to the extent and at the
 15 time necessary to make payments required under
 16 such judgment or settlement;

17 (ii) to the extent that a tobacco product
 18 manufacturer establishes that the amount it was
 19 required to place into escrow on account of
 20 units sold in the State in a particular year
 21 was greater than the Master Settlement
 22 Agreement payments, as determined pursuant to
 23 Section IX(i) of that Agreement, including
 24 after final determination of all adjustments,
 25 that such manufacturer would have been required
 26 to make on account of such units sold the
 27 State's allocable share of the total payments
 28 that such manufacturer would have been required
 29 to make in that year under the Master
 30 Settlement Agreement (as determined pursuant to
 31 Section IX(i)(2) of the Master Settlement
 32 Agreement, and before any of the adjustments or
 33 offsets described in Section IX(i)(3) of that
 34 Agreement other than the Inflation Adjustment)

1 had it been a Participating Manufacturer, the
2 excess shall be released from escrow and revert
3 back to such tobacco product manufacturer; or

4 (iii) to the extent not released from
5 escrow under subdivisions (a)(2)(B)(i) or
6 (a)(2)(B)(ii), funds shall be released from
7 escrow and revert back to such tobacco product
8 manufacturer 25 years after the date on which
9 they were placed into escrow.

10 (C) Each tobacco product manufacturer that
11 elects to place funds into escrow pursuant to this
12 subdivision (a)(2) shall annually certify to the
13 Attorney General that it is in compliance with this
14 subdivision (a)(2). The Attorney General may bring
15 a civil action on behalf of the State of Illinois
16 against any tobacco product manufacturer that fails
17 to place into escrow the funds required under this
18 subdivision (a)(2). Any tobacco product
19 manufacturer that fails in any year to place into
20 escrow the funds required under this subdivision
21 (a)(2) shall:

22 (i) be required within 15 days to place
23 such funds into escrow as shall bring it into
24 compliance with this Section. The court, upon
25 a finding of a violation of this subdivision
26 (a)(2), may impose a civil penalty to be paid
27 into the General Revenue Fund in an amount not
28 to exceed 5% of the amount improperly withheld
29 from escrow per day of the violation and in a
30 total amount not to exceed 100% of the original
31 amount improperly withheld from escrow;

32 (ii) in the case of a knowing violation,
33 be required within 15 days to place such funds
34 into escrow as shall bring it into compliance

1 with this Section. The court, upon a finding
 2 of a knowing violation of this subdivision
 3 (a)(2), may impose a civil penalty to be paid
 4 into the General Revenue Fund in an amount not
 5 to exceed 15% of the amount improperly withheld
 6 from escrow per day of the violation and in a
 7 total amount not to exceed 300% of the original
 8 amount improperly withheld from escrow; and
 9 (iii) in the case of a second knowing
 10 violation, be prohibited from selling
 11 cigarettes to consumers within the State of
 12 Illinois (whether directly or through a
 13 distributor, retailer, or similar intermediary)
 14 for a period not to exceed 2 years.

15 (b) Each failure to make an annual deposit required
 16 under this Section shall constitute a separate violation. If
 17 a tobacco product manufacturer is successfully prosecuted by
 18 the Attorney General for a violation of subdivision (a)(2),
 19 the tobacco product manufacturer must pay, in addition to any
 20 fine imposed by a court, the State's costs and attorney's
 21 fees incurred in the prosecution.

22 (Source: P.A. 91-41, eff. 6-30-99.)

23 (30 ILCS 168/20 new)

24 Sec. 20. If this amendatory Act of the 93rd General
 25 Assembly or any portion of the amendment to subdivision
 26 (2)(B)(ii) of subsection (a) of Section 15 made by this
 27 amendatory Act of the 93rd General Assembly is held by a
 28 court of competent jurisdiction to be unconstitutional, then
 29 such subdivision (2)(B)(ii) of subsection (a) of Section 15
 30 shall be deemed to be repealed in its entirety. If
 31 subdivision (2)(B)(ii) of subsection (a) of Section 15 shall
 32 thereafter be held by a court of competent jurisdiction to be
 33 unconstitutional, then this amendatory Act of the 93rd

1 General Assembly shall be deemed repealed and subdivision
2 (2)(B)(ii) of subsection (a) of Section 15 shall be restored
3 as if no such amendments had been made. Neither any holding
4 of unconstitutionality nor the repeal of subdivision
5 (2)(B)(ii) of subsection (a) of Section 15 shall affect,
6 impair, or invalidate any other portion of Section 15 or the
7 application of such Section to any other person or
8 circumstance, and such remaining portions of Section 15 shall
9 at all times continue in full force and effect.